IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 499 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CEAT TYRES LIMITED A COMPANY REGISTERED UNDER - Applicant(s)

Versus

THE STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :

MR P.C.Kavina with Mr. PADMRAJ K JADEJA for the Applicant.
Mr. K.C.Shah, Addl. PUBLIC PROSECUTOR for Respondent no.1.
RULE SERVED BY DS for Respondent(s) : 2 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 14/08/2006

ORAL JUDGMENT

The present application has been preferred against the order dated 12th July, 2006 in Criminal

Revision Application No. 268 of 2006 passed by the learned Additional City Sessions Judge, Court no.12, Ahmedabad, whereby the Revision Application preferred by the respondent no. 3 has been partly allowed and the order of accepting oral evidence at exh. 13 and order exhibiting documents at exh. 17, passed by the learned Metropolitan Magistrate, Court no. 22, Ahmedabad in criminal case no.60 of 2005 passed on 20th May, 2006 has been quashed and set aside. By the impugned order, the City Sessions Court remanded the matter and the trial court has been directed to decide whether the exhibited documents at exh. 17 should be exhibited or not after the cross-examination is over. In the operation portion of the order, however, the learned Additional City Sessions Judge has also set aside order with regard to exh. 13, namely, that of, taking affidavit on record.

2. I have heard the learned advocate for the applicant who has mainly submitted that in view of the new provisions inserted as sections 143 to 147 of the Negotiable Instruments Act, 1881, especially in view of section 145 of the Act of 1881, on the

basis of the affidavit, examination-in-chief can be given. In the present case, the complaint was given under Negotiable Instruments Act, 1881 in the year 2001 for dishonour of four cheques for the total sum of about Rs.1,22,00368/-. The affidavit was tendered to the court on 9th December, 2005 as evidence-in-chief below exh.13 wherein documents presented were referred and relied upon and therefore, all the documents presented by the original complainant-present applicant ought to have been exhibited. An application exh. 15 was given by respondent no. 3 on 19th December, 2005, by which objections were raised, wherein it was pointed out that insertion of sections 143 to 147 in the Act of 1881 have been brought into effect from 6th February, 2003 and therefore, these provisions of sections 143 to 147 of the Act of 1881 are not applicable to the present complaint which is filed in the year 2001. Thereafter, an application was given vide exh.17 by the present applicant on 13th March, 2006 for giving exhibit numbers to the documents which are, referred to and relied upon, in the affidavit, i.e. Evidence-in-chief. Therefore, an order was passed on 20th May, 2006 by the learned

Metropolitan Magistrate, court no.22, whereby the application exh. 17 was allowed and this is how the documents were exhibited by the trial court. It is also submitted by the learned advocate for the applicant that insertion of sections 143 to 147 in the Act of 1881 is nothing but amendments so far as procedural aspect is concerned, they are applicable to all the complaints which are pending for adjudications and decisions. The learned advocate has also relied upon a decision of the High Court of Bombay in the case of Indraprastha Holdings Ltd. vs. Vijay Shah reported in 2006 NOC,228 (Bombay) and submitted that on the basis of the said judgment, the provisions of section 145 of the Act of 1881 are applicable to the pending criminal complaints which were filed prior to 6th February, 2003 and therefore, the decision given by the learned Metropolitan Magistrate was true and correct. However, against the said order, Criminal Revision Application no. 268 of 2006 was preferred by respondent no. 3 (original accused) and the learned Additional City Sessions Judge, Court no.12, Ahmedabad, vide order dated 12th July, 2006 has quashed and set aside the order

passed by the learned Metropolitan Magistrate, Court no.22, Ahmedabad and remanded the case for a fresh decision to be taken whether exhs. 13 and 17 should be exhibited or not after cross-examination is over. It is also submitted by the learned advocate for the applicant that the Sessions Judge has not properly appreciated the fact that inserted sections 143 to 145 are applicable even to the pending criminal complaints which are yet not finally decided. The amendment is procedural in nature and once the documents are already exhibited by the order passed by the trial court, the Criminal Revision Application ought not to have been allowed by the City Sessions Court, Ahmedabad. The learned advocate for the applicant also submitted that the respondent no. 3 is always resorting to delay tactics so that criminal complaints filed by the present applicant do not proceed ahead and finally adjudicated. Several times, such types of applications have been given and several Revision Applications have been preferred, one by one. Thus, from the year 2001, the complaint has not been decided. There are other criminal complaints against respondent nos. 2,3 and 4 for

dishonour of several cheques. The total amount in all the complaints is more than Rs. 2 crores. Number of cheques have been dishonoured which were given by respondent nos. 2, 3 and 4. Even quashing petition preferred under section 482 of the Code of Criminal Procedure before this Court has been dismissed with costs. Thus, this Court has awarded costs to the applicant in a quashing matter filed by the respondent-accused. One of such judgments between the same parties is reported in XLIV(1) GLR, 18. Thus, several attempts have been made by the respondents so that criminal complaints filed by the applicant may not be decided finally by the trial court. In view of these facts, the order passed by the learned Additional City Sessions Judge, deserves to be quashed and set aside.

3. Though respondent nos. 2,3 and 4 are served, nobody appears on their behalf. Affidavit of service of notice has also been filed. Rule was issued on 26th July, 2006 making it returnable on 7th August, 2006. Thereafter, the matter was listed on board on 8th August, 2006. As nobody had appeared on behalf of

respondent nos. 2 to 4, it was again adjourned to 14th August, 2006 i.e. Today. Today, when the mater is called out, nobody appears for respondent nos. 2 to 4. Therefore, I have heard the learned advocate for the applicant as well as learned Additional Public Prosecutor for the respondent no.1 State.

4. I have heard the learned Additional Public Prosecutor for respondent State who has also submitted that newly inserted sectsions 143 to 147 of the Act of 1881 are applicable to the complaints which are already pending and awaiting for its final adjudication. Under section 145(1) of the Act of 1881, examination-in-chief can be taken on the basis of the affidavit. Looking to the facts of the case, affidavit exh. 13 was tendered by the complainant on 9th December, 2005. Thus, several documents were referred in the said evidence-in-chief and therefore, the order passed by the learned Metropolitan Magistrate to exhibit those documents was absolutely true and correct. Once the documents are exhibited, the Revision Application ought not to have been allowed by the City Sessions Court, because such type

of Revision Application is causing delay in disposal of criminal complaint. At the time of final hearing, the respondent nos. 2 to 4 can raise their objections as to the evidentiary value of those documents. The learned APP has also submitted that giving exhibit numbers to the documents is a discretionary power vested in the trial court. It all depends upon the subjective satisfaction of the trial court whether the documents should be exhibited or not. Looking to the facts of the present case, documents were already exhibited vide order dated 20th May, 2006 by the learned Metropolitan Magistrate and as per the decision rendered by the Hon'ble Supreme Court in the case of **Bipin Shantilal Panchal vs. State of Gujarat and another reported in (2001) 3 SCC, 1,** the Revision Application filed by the respondent nos. 2 to 4 ought not to have been allowed by the lower appellate court. Whatever may be the objections of respondent nos. 2 to 4, they must be recorded so that the same can be considered at the time of final hearing of the criminal complaint and such type of order passed by the learned Metropolitan Magistrate ought not to have been allowed to be challenged by way of Revision

Application by the lower appellate court. This aspect of the matter has not been appreciated by the City Sessions Court and hence, the impugned order passed by the learned Additional City Sessions Judge, Ahmedabad requires to be quashed and set aside. The learned APP has also extended his arguments on the basis of section 167 of the Indian Evidence Act, 1872 and pointed out that once document is exhibited, it cannot be de-exhibited. But an argument can be advanced on the basis of already exhibited document upon its evidentiary value. But once it is exhibited, it is an irreversible process. Ultimately, it all depends upon the trial court how much weightage is to be given to such evidence. Whether any fact is said to be proved, not proved or disproved, as per section 3 of the Indian Evidence Act, 1872 that all depends upon subjective satisfaction of the trial court. The learned Additional Public Prosecutor has also relied upon the definition of words " proved", "disproved" and "not proved" as per section 3 of the Evidence Act. Evidentiary value of the documents will be judged by the trial court at the time of giving final verdict

about any fact proved or disproved or not proved. Exhibiting a document is not binding upon the trial court that highest evidentiary value ought to be attached to the said document. Thus, by giving exhibit numbers to the documents in question vide evidence-in-chief, on the basis of the affidavit filed by the complainant under section 145(1) of the Act of 1881, has not caused any prejudice to respondent nos. 2 to 5. This aspect of the matter has not been appreciated by the lower appellate court and hence the impugned order dated 12th July, 2006 in Criminal Revision Application no. 268 of 2006 passed by the lower appellate court deserves to be quashed and set aside.

5. Having heard the learned advocate for the applicant as well as learned Additional Public Prosecutor, and looking to the facts and circumstances of the case and provisions of Negotiable Instruments Act, 1881, read with the provisions of Indian Evidence Act, 1872, in my opinion, the impugned order dated 12th July, 2006 in Criminal Revision Application no. 268 of 2006

passed by the learned Additional City Sessions Judge, Court no. 12, Ahmedabad, requires to be quashed and set aside for the following facts and reasons:

(i) The criminal complaint is filed for the offence under section 138 of the Negotiable Instruments Act, 1881 by the present applicant in the year 2001. Plea in the said complaint was recorded on 14th October,2005. In the meanwhile, sections 143 to 147 have been inserted in the Negotiable Instruments Act,1881. The complaint is under section 138 of the Act of 1881. Thereafter, affidavit was tendered at exh.13 under section 145(1) of the Act of 1881 which is an evidence-in-chief which is dated 9th December,2005. Objections were raised by respondent nos. 2 to 4 for following sections 143 to 147 of the Act of 1881 on the ground that these newly added sections were brought into effect with effect from 6th February,

2003 and therefore, these sections were not applicable to the complaints which were filed in the year 2003. These objections were raised by respondents-accused vide application exh. 15 which is dated 19th December, 2005. Thereafter, a further application was given by the applicant (original complainant) at exh. 17 on 13th March, 2006 for exhibiting documents which were referred in exh. 13 evidence-in-chief. This application was decided by the learned Metropolitan Magistrate, Court no.22, Ahmedabad vide his order dated 20th May, 2006, whereby application exh. 17 given by the applicant was allowed. The application below exh. 17 was allowed by the trial court. Affidavit (exh13) tendered by the complainant under section 145(1) of the Act, 1881 is now known as evidence-in-chief and the documents given in support of the affidavit were ordered to be exhibited. The reasons given by the trial

court are as under:

" The case falls under section 138 of NIAct, which is pending for evidence of complainant side. The complainant has filed affidavit of his evidence vide exh. 13 with documentary evidence. But, learned advocate Mr. Kayasth for accused no.3 opposed to exhibit documentary evidences and has also raised a point that as complaint has been filed before amendments come into force i.e. before 6.2.2003, therefore, complainant must come into witness box for deposition and he cannot file affidavit of evidence. The learned advocate Mr. Kayasth for accused no.3 h as also file written objection vide exh.15 in this regard. Therefore, complainant has applied by this application and has prayed that he may be allowed to adduce his evidence on affidavit that has already been at exh.13 and has also prayed for to exhibit the documents that have been produced in support to the affidavit.

Let, it be cleared that, before amendment, sections 138 to 142 of NIAct have been found deficient in dealing with dishonour of cheques, and the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome and the Court were unable to dispose of such cases expeditiously in a time bound manner in view of procedure contained therein. As a result, a large number of such cases are reported pending. Therefore, these new provisions i.e. sections 143 to 147 of NIAct have been incorporated and enforced from 6.2.2003 with a view to encouraging the culture of use of cheques and enhancing the credibility of instrument.

In view of section 145(1) of NIAct, it is crystal clear that as complainant's deposition is not being started before 6.2.2003, therefore, the complainant can

> adduce evidence on affidavit on or after 6.2.2003 as procedural amendments come into force on that day. It is the law that amendments in procedure would apply to all pending cases from the day of its enforcement, in that spirit it is prospective. In this case, it is to be noted that plea a of accused have been noted on 14.10.2005 and complainant has adduced evidence on affidavit on 8.12.2005 i.e. after amendment, therefore, objections of accused no. 3 is not tenable in the eye of law. Therefore, the court does not agree with the arguments of learned advocate Mr. Kayasth for accused no. 3 that procedural amendments could only be applied to the complaint which has been filed on or after 6.2.2003."

I agree with the aforesaid reasons. Accurately the application below exh. 17 was decided with reasons and it is correctly pointed out by the trial court that sections 143 to 147 of the Act of 1881 prescribe the procedure for the courts to deal with criminal complaints. These sections are amended by Amending Act of 2002. Looking to objects and reasons of this Amending Act, 2002 also, these sections are applicable to pending criminal cases, if particular stage is not over as per Sections 143 to 147. Plea was recorded

on 14th October, 2005. Thus, prior to the plea was recorded, these sections were brought into effect, i.e. from 6th February, 2003. The complaint was not proceeded at all prior to 6th February, 2003. Even otherwise also, all the pending complaints in which no examination-in-chief has been taken, these sections are applicable. No prejudice is going to be caused to the respondent nos. 2 to 4-accused if the provisions contained in sections 143 to 147 are followed. The sections 143 to 147, which are pertaining to the procedure of the criminal court, are applicable to the pending criminal complaints. No right of the respondent nos.2 to 4 accused has been taken away. On the contrary, by insertion of these sections, speedily criminal complaints can be disposed of. To accelerate the procedure, these sections have been added. By this type of addition of Sections 143 to 147 in the Act, 1881, no new right/duty is created or abridged.

Therefore, these sections are applicable to the pending complaints, especially when no examination-in-chief of any of the witnesses has taken place. Looking to the facts of the present case, it seems that even plea was recorded on 14th October, 2005. Evidence-in-chief is dated 9th December, 2005 and therefore, exh. 17 is correctly decided by the trial court vide order dated 20th May, 2006 and rightly, all the documents which are referred in exh. 13 are to be exhibited.

(ii) If at all there is any objection, for giving exhibit number to any document, the court should record those objections so that at the time of final hearing, the objectors can point out their objections and the trial court may consider the same and decide evidentiary value of those documents. It is the subjective satisfaction of the trial court whether the documents should be exhibited or not. So far as its evidentiary value is

concerned, all that depends upon the totality of the evidence to be read as a whole and as a cumulative effect thereof, the trial court may come to a conclusion as to whether facts are proved, disproved or not proved. Thus, a mere decision of giving exhibit numbers by the learned Metropolitan Magistrate could not have been challenged in the Revision Application preferred by the respondent nos. 2 to 4. Against the said order, Revision Application is not tenable at law. It has been decided by the Apex Court in the case of **Bipin Shantilal Panchal vs. State of Gujarat and another, reported in (2001) 3 SCC, 01** in paragraphs 11, 12, 13 and 14 as under:

> "11. We are compelled to say that the trial Judge should have shown more sensitivity by adopting all measures to accelerate the trial procedure in order to reach its finish within the time frame indicated by this Court in the order dated 31.3.2000 since he knew very well that under his orders an accused is continuing in jail as an under trial for a record period of more than seven years. Now, we

feel that the Additional Judge, whether the present incumbent or his predecessor, was not serious in complying with the directions issued by this Court, though the parties in the case have also contributed their share in bypassing the said direction."

12. As pointed out earlier, on different occasions the trial Judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial court waited for days and weeks for the parties concerned to go before the higher courts for the purpose of challenging such interlocutory orders.

13. It is an archaic practice that during the evidence-collecting stage, *whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this:* Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposed of the case finally. If the appellate or revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording

that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would held acceleration of trial proceedings.

14. When so recast, the practice which an be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected documents tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."
(Emphasis supplied)

By giving exhibits with objections recorded, to the documents, the court is not concluding its mind. Exhibit numbers given to the

documents with objections recorded, only reveal the fact that they are relevant documents. Relevancy is seen by the court. Even looking to the provisions of sections 145(2) of the Act of 1881, the court can put the question to the said witness who is always available for his cross-examination. Even otherwise also, as stated by the learned advocate for the applicant that the applicant, i.e. the original complainant is always available to the court for his cross-examination. He is always attending the court. Thus, no prejudice has been caused to the respondent nos. 2 to 4. They can take cross-examination of the witness who has given evidence-in-chief. Likewise, the court can also raise the question under section 145(2) of the Act of 1881. Cross-examination is a weapon in the hands of the accused. He can substantially reduce the evidentiary value of the document which is already exhibited by thorough and proper cross-examination. It is an art with which lawyers

are wedded. Merely because the respondents have objections and therefore, the court cannot give exhibit numbers is not the procedure to be adopted. On the contrary, as stated in the case reported in (2001) 3 SCC, 1, such objection should be recorded and subject to it, exhibit number ought to be given. This aspect of the matter has not been appreciated by the learned Additional City Sessions Judge, Ahmedabad.

(iii) In the case of **M/s. Indraprastha Holdings Ltd. vs. Vijay J Shah, reported in AIR (2006) NOC, 228, Bombay, equivalent to 2006(1) AIR, Bombay, 132**, it has been held that the provisions of section 145 of the Act of 1881 are purely procedural in nature and therefore, are applicable to the pending criminal complaints prior in point of time from 6th February, 2003. The relevant portion of the judgment reads as under:

" Section 145 of the Negotiable Instruments Act, as amended by amendment Act of 2002 is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded. It provides that the evidence of the complainant may be given by him on

affidavit and on application made by the accused, the Court shall summon and examine the person giving evidence on affidavit as to the facts contained therein. Thus, section 145 is purely a rule of procedure. It is obvious that the rule of procedure which is incorporated in section 145 does not affect any vested right of either parties. The legislative intent as reflected from the statements of objects and reasons of Amending Act is to ensure that the procedure in complaints under section 138 should not be cumbersome and there should be expeditious conclusion of trials. Section 145 which merely affects the procedure will have to be presumed to be retrospective in its operation and will apply to all complaints pending on 6th February, 2003." (Emphasis supplied).

Looking this aspect of the matter also, the newly added sections 143 to 147 of the Act of 1881 are applicable to the present complaint and therefore, the decision taken by the learned Metropolitan Magistrate, Court no. 22, Ahmedabad is absolutely true and correct against which Revision Application preferred by the respondent nos. 2 to 4 was not tenable at law.

6. As a cumulative effect of the aforesaid facts and reasons and the judicial pronouncements, the judgment and order dated 12th July, 2006 in Criminal Revision Application 268 of 2006 passed by

the learned Additional City Sessions Judge, Court no.12, Ahmedabad is hereby quashed and set aside. The learned Metropolitan Magistrate, Court no.12, Ahmedabad is hereby directed to dispose of criminal case no. 60 of 2001 as early as possible and preferably on or before 28th December, 2006. Rule made absolute accordingly.

(D.N.Patel,J)

***darji